

ORDINANCE NO. 52

FIREWORKS CODE OF THE TULALIP TRIBES OF WASHINGTON

ARTICLE 1 PURPOSE

- 1.1 Purpose.** In order to provide for the safe and orderly use of fireworks and the protection of life and property within the Tulalip Indian Reservation, and in other areas served by businesses offering fireworks for sale, and in order to regulate the sale of fireworks for the welfare of all members of the Tulalip Tribes, the Board of Directors of the Tulalip Tribes hereby enacts the following amended Fireworks Code.
- 1.2 Administration.** The provisions of this Code shall be administered and enforced by the Tax and Licensing Division of the Tulalip Tribes, or by such other persons designated by the Tulalip Tribes' Board of Directors.
- 1.3 Regulations Authorized.** To the extent consistent with its authorities hereunder, the Tax and Licensing Division may promulgate regulations necessary or appropriate for the efficient administration and enforcement of this Code.

ARTICLE 2 DEFINITIONS

- 2.1 Board of Directors:** The Board of Directors of the Tulalip Tribes.
- 2.2 Fireworks:** Any device containing any combustible or explosive substance for the purpose of producing a visible or audible display of combustion, explosion, deflagration or detonation, but not including any firearms.
- 2.3 Enforcement Authorities:** The Tax and Licensing Division of the Tulalip Tribes, Tulalip Law Enforcement, and any other person to whom the authority to administer and enforce this Code shall have been delegated by the Board of Directors of the Tulalip Tribes.
- 2.4 Fireworks Stand:** Location at which fireworks are offered for retail sale.
- 2.5 License:** Authorization issued by the Tulalip Tribes under this Code, through the Tax and Licensing Division, to engage in the transport, possession, discharge, or retail and/or wholesale sale of authorized fireworks. A license is personal to the licensee and is not transferrable.
- 2.6 Licensee:** Person to whom license has been issued under this Code.
- 2.7 Regulations.** Except as otherwise clearly indicated, any regulations duly promulgated by the Tax and Licensing Divisions pursuant to its authorities under this Code.
- 2.8 Restraint:** Summary, pre-hearing closure of any retail fireworks stand, suspension or seizure

of any license, seizure of any property, or removal of any person authorized in this Code.

- 2.9 Sanction:** Any penalty whatsoever imposed by the Tribal Court or by the Tax and Licensing Division, for violation of any provision of this Code, any regulations adopted hereunder, or any license issued pursuant to this Code. The term includes but is not limited to any restraint, civil penalty, license suspension, modification or revocation, seizure, or any other form of penalty authorized in this Code. Unless otherwise clearly indicated, all sanctions authorized under this Code are cumulative and additional to any other sanction authorized in this Code.
- 2.10 Tax and Licensing Division:** The Tax and Licensing Division of the Tulalip Tribes or its designee.
- 2.11 Tribal Court:** The Tribal Court of the Tulalip Tribes.
- 2.12 Tribal Safe and Sane Fireworks:** Fireworks devices authorized by Article 5 hereof and not declared unlawful thereby.

ARTICLE 3 LICENSING

- 3.1 License Required.** No person may offer or sell any fireworks devices, and no person may transport, possess, or discharge any fireworks devices incident to any offer or sale, without first obtaining a license therefor as provided in this Article.
- 3.2 Scope of License.** A license issued under this Article shall not authorize any activity, or the transport, discharge, offering for sale, or sale of any fireworks devices prohibited under this Code.
- 3.3 Applications.** Every applicant for a Tulalip tribal fireworks license shall provide the following information to the Tax and Licensing Division:
- 3.3.1** Name;
 - 3.3.2** Address;
 - 3.3.3** Telephone Number;
 - 3.3.4** Location where fireworks devices will be sold;
 - 3.3.5** Identification of persons who will assist or be employed by applicant to sell fireworks devices;
 - 3.3.6** A complete inventory of fireworks devices to be sold; and
 - 3.3.7** Tribal identification card issued to the applicant by the Tulalip Tribes.
- 3.4 Issuance of Licenses.** Licenses shall be issued at the discretion of the Tax and Licensing Division. Any person whose license application is denied shall be notified of such action with a statement of the reasons for the denial.
- 3.5 Fee Required for License.** A person whose application for a license has been approved by the Tax and Licensing Division shall be issued a license upon payment of the appropriate fee as established by the Board of Directors. Any applicant with an outstanding balance due on license fees from previous years shall be required to pay any outstanding balance as well as the current license fee before receiving a license.

- 3.6 Term.** A license issued under this Article shall be effective for two seasons, to-wit: the “Fourth of July season”, and the “New Year's season”. The duration of each season shall be established by resolution of the Board of Directors, and each license shall be limited accordingly.
- 3.7 Form of License.** The Board of Directors shall approve the form of retail and wholesale licenses, and may include conditions therein for safety, protection of the general welfare, protection of life and property, and to satisfy requirements of the Tribe's insurer. Such conditions may require licensees to maintain insurance, and provide proof of insurance, in such form and amount as the Board of Directors determines.

ARTICLE 4 AUTHORIZED PERSONS, OPERATION

- 4.1 Authorized Persons.** The following persons shall be eligible to apply for fireworks licenses: Enrolled members of the Tulalip Tribes who are 18 years of age or over.
- 4.2 Retail Licensee Responsible.** Licensees who operate retail fireworks sales establishments shall be present during times of operation or shall be in close control of the business. A licensee is in close control of the business where, though absent for reasonable periods of time, (s)he remains responsible for and in control of the operation of the business, ensuring that the provisions of the license, this Code, and any regulations adopted hereunder, are not violated in his/her absence.
- 4.3 Licensee Assistance.** A licensee may employ or be assisted in the operation of his/her fireworks stand by one or a combination of the following: Any adult Tulalip tribal member; any licensee's spouse; or any Tulalip tribal member or child of a tribal member or stepchild of a tribal member over the age of sixteen (16) years of age who is assisted by an adult present that is either a Tulalip tribal member or the licensee's spouse; *provided*, that no person may be employed or assist in the operation of a fireworks stand whose license has been revoked, suspended, or who is otherwise ineligible for a license under Section 6.7 hereof.

ARTICLE 5 FIREWORKS DEVICES DECLARED UNLAWFUL; CLASSIFICATION OF TRIBAL SAFE AND SANE FIREWORKS

- 5.1 Prohibited Devices - Generally.** The following fireworks devices are unlawful and prohibited under this Code and by any license issued under this Code:
- 5.1.1** Any fireworks devices, except for firecrackers, salutes, chasers, skyrockets and missile-type rockets not otherwise prohibited and as restricted in this Article 5, including kits and components intended to produce such fireworks banned under 15 U.S.C. §§ 1261-74 as amended by the Child Protection Act of 1966 (PL 89-756), the Child Protection and Toy Safety Act of 1969 (PL 91- 133) and the Poison Prevention Packaging Act of 1970 (PL 91-601), and all applicable requirements of 16 CFR Part 1500, et seq., (as amended through September 7, 1999).

- 5.1.2** Any firecrackers designed to produce audible effects, if the audible effect is produced by a charge of more than 50 milligrams (.772 grains) of pyrotechnic composition (not including firecrackers included as components of a rocket), aerial bombs, and devices that may be confused with candy or other foods, such as "dragon eggs," and "cracker balls" (also known as "balltype caps"), and including kits and components intended to produce such fireworks.
- 5.1.3** Any fireworks devices intended to produce audible effects (including but not limited to cherry bombs, M-80 salutes, silver salutes, and other large firecrackers, aerial bombs, and other fireworks devices designed to produce audible effects, and including kits and components intended to produce such fireworks) if the audible effect is produced by a charge of more than two grains of pyrotechnic composition.
- 5.1.4** Reloadable tube aerial shell fireworks devices that use shells larger than 1.75 inches in outer diameter and that are imported on or after October 8, 1991.
- 5.1.5** Multiple-tube mine and shell fireworks devices that first enter commerce or are imported on or after March 26, 1997, that have any tube measuring 1.5 inches (3.8 cm) or more in inner diameter, and that have a minimum tip angle less than 60 degrees when tested in accordance with the procedure of 16 CFR 1507.12.
- 5.1.6** Provided, that nothing in this Section 5.1 shall render any activity unlawful with respect to any fireworks devices identified in subsections 5.1.1 through 5.1.3 which meet all of the following conditions:
- 5.1.6.1** The fireworks devices are distributed to farmers, ranchers, or growers through a wildlife management program administered by the U.S. Department of the Interior (or by equivalent State or local government agencies); and
- 5.1.6.2** Such distribution is in response to a written application describing the wildlife management problem that requires use of such devices, is of a quantity no greater than required to control the problem described, and is where other means of control is unavailable or inadequate.

5.2 Prohibited Devices - Characteristics. It shall be unlawful and prohibited under this Code for any person to transport, possess, discharge or offer for sale any fireworks devices which fail to comply with the requirements of this Section 5.2:

- 5.2.1** Chemicals. Fireworks devices shall not contain any of the following chemicals:
- 5.2.1.1** Arsenic sulfide, arsenates, or arsenites.
- 5.2.1.2** Boron.
- 5.2.1.3** Chlorates, except:
- (a) In colored smoke mixtures in which an equal or greater amount of sodium bicarbonate is included.
- (b) In caps and party poppers.
- (c) In those small items (such as ground spinners) wherein the total powder content does not exceed 4 grams of which not greater than 15 percent (or 600 milligrams) is potassium, sodium, or barium chlorate.
- 5.2.1.4** Gallates or gallic acid.

- 5.2.1.5** Magnesium (magnesium/aluminum alloys, called magnalium, are permitted).
- 5.2.1.6** Mercury salts.
- 5.2.1.7** Phosphorus (red or white). Except that red phosphorus is permissible in caps and party poppers.
- 5.2.1.8** Picrates or picric acid.
- 5.2.1.9** Thiocyanates.
- 5.2.1.10** Titanium, except in particle size greater than 100-mesh.
- 5.2.1.11** Zirconium.
- 5.2.2** Fuses.
- 5.2.2.1** Fireworks devices that require a fuse shall:
- (a) Utilize only a fuse that has been treated or coated in such manner as to reduce the possibility of side ignition. Devices such as ground spinners that require a restricted orifice for proper thrust and contain less than 6 grams of pyrotechnic composition are exempted from 16 CFR 1507.3(a)(1).
- (b) Utilize only a fuse which will burn at least 3 seconds but not more than 9 seconds before ignition of the device.
- 5.2.2.2** The fuse shall be securely attached so that it will support either the weight of the fireworks device plus 8 ounces of dead weight or double the weight of the device, whichever is less, without separation from the fireworks device.
- 5.2.3** Bases. The base or bottom of fireworks devices that are operated in a standing upright position shall have the minimum horizontal dimensions or the diameter of the base equal to at least one-third of the height of the device including any base or cap affixed thereto.
- 5.2.4** Pyrotechnic Leakage. The pyrotechnic chamber in fireworks devices shall be sealed in a manner that prevents leakage of the pyrotechnic composition during shipping, handling, and normal operation.
- 5.2.5** Burnout and Blowout. The pyrotechnic chamber in fireworks devices shall be constructed in a manner to allow functioning in a normal manner without burnout or blowout.
- 5.2.6** Handles and spikes.
- 5.2.6.1** Fireworks devices which are intended to be hand-held and are so labeled shall incorporate a handle at least 4 inches in length (see 16 CFR 1500.14(b)(7)). Handles shall remain firmly attached during transportation, handling and full operation of the device, or shall consist of an integral section of the device at least four inches below the pyrotechnic chamber.
- 5.2.6.2** Spikes provided with fireworks devices shall protrude at least 2 inches from the base of the device and shall have a blunt tip not less than 1/8 -inch in diameter of 1/8 -inch square.

- 5.2.7** Wheel devices. Drivers in fireworks devices commonly known as "wheels" shall be securely attached to the device so that they will not come loose in transportation, handling, and normal operation. Wheel devices intended to operate in a fixed location shall be designed in such a manner that the axle remains attached to the device during normal operation.
- 5.2.8** Toy smoke devices and flitter devices.
- 5.2.8.1** Toy smoke devices shall be so constructed that they will neither burst nor produce external flame (excluding the fuse and firstfire upon ignition) during normal operation.
- 5.2.8.2** Toy smoke devices and flitter devices shall not be of such color and configuration so as to be confused with banned fireworks devices such as M-80 salutes, silver salutes, or cherry bombs.
- 5.2.8.3** Toy smoke devices shall not incorporate plastic as an exterior material if the pyrotechnic composition comes in direct contact with the plastic.
- 5.2.9** Rockets with sticks. Rockets with sticks (including skyrockets and bottle rockets) shall utilize a straight and rigid stick to provide a direct and stable flight. Such sticks shall remain straight and rigid and attached to the driver so as to prevent the stick from being damaged or detached during transportation, handling, and normal operation.
- 5.2.10** Party Poppers. Party poppers (also known by other names such as "Champagne Party Poppers," and "Party Surprise Poppers,") shall not contain more than 0.25 grains of pyrotechnic composition. Such devices may contain soft paper or cloth inserts provided any such inserts do not ignite during normal operation.
- 5.2.11** Multiple-tube Fireworks Devices.
- 5.2.11.1** Application. Multiple-tube mine and shell fireworks devices with any tube measuring 1.5 inches (3.8 cm) or more in inside diameter and subject to s 1500.17(a)(12) of this part shall not tip over when subjected to the tip-angle test described in this section.
- 5.2.11.2** Testing procedure. The device shall be placed on a smooth surface that can be inclined at 60 degrees from the horizontal, as shown in Figure 1 of this section. The height and width of the inclined plane (not including the portion of the plane below the mechanical stop) shall be at least 1 inch (2.54 cm) greater than the largest dimension of the base of the device to be tested. The test shall be conducted on a smooth, hard surface that is horizontal as measured by a spirit level or equivalent instrument. The mechanical stop on the inclined plane shall be 1/16 inches (1.6 mm) in height and perpendicular to the inclined plane. The stop shall be positioned parallel to the bottom edge of the inclined plane and so that no portion of the device to be tested or its base touches the horizontal surface. The device shall not tip over when the plane is inclined at 60-degrees from the horizontal. The procedure shall be repeated for each edge of the device.

5.3 Prohibited Devices - Labeling. It shall be unlawful and prohibited under this Code for any person to transport, possess, discharge or offer for sale any fireworks devices which are not

labeled in the manner set forth in any subsection to this Section 5.3:

5.3.1 Fountains. **WARNING (OR CAUTION). FLAMMABLE (or EMITS SHOWERS OF SPARKS, if more descriptive).** Use only under [close] adult supervision. (Use of the word close is optional.) For outdoor use only. Place on level surface. Light fuse and get away.

5.3.2 California candles. **WARNING (OR CAUTION) EMITS SHOWERS OF SPARKS.** Use only under [close] adult supervision. (Use of the word close is optional.). For outdoor use only. Hold in hand at bottom of tube. Point away from body so that neither end points toward body.

5.3.3 Spike and handle cylindrical fountains.

5.3.3.1 Spike fountains. **WARNING (OR CAUTION) EMITS SHOWERS OF SPARKS.** Use only under [close] adult supervision. (Use of the word close is optional.). For outdoor use only. Stick firmly in ground in an upright position. Do not hold in hand. Light fuse and get away.

5.3.3.2 Handle fountains. **WARNING (OR CAUTION) EMITS SHOWERS OF SPARKS.** Use only under [close] adult supervision. (Use of the word close is optional.) For outdoor use only. Hold in hand--point away from body. Light fuse.

5.3.4 Roman Candles. **WARNING (OR CAUTION) SHOOTS FLAMING BALLS.** Use only under [close] adult supervision. (Use of the word close is optional.). For outdoor use only. Stick butt end in ground. Do not hold in hand. Light fuse and get away.

5.3.5 Rockets with sticks. **WARNING (OR CAUTION) FLAMMABLE.** Use only under [close] adult supervision. (Use of the word close is optional.). For outdoor use only. Place in wooden trough or iron pipe at 75° angle, pointing away from people or flammable material. Do not hold in hand. Light fuse and get away.

5.3.6 Wheels. **WARNING (OR CAUTION) FLAMMABLE (OR EMITS SHOWERS OF SPARKS, if more descriptive).** Use only under [close] adult supervision. (Use of the word close is optional.). For outdoor use only. Attach securely by means of a nail through the hole (or place on hard flat surface, for ground spinners). Light fuse and get away.

5.3.7 Illuminating torches. **WARNING (OR CAUTION) FLAMMABLE (OR EMITS SHOWERS OF SPARKS, if more descriptive).** Use only under [close] adult supervision. (Use of the word close is optional.) For outdoor use only. Hold in hand--point away from body, clothing, or other flammable material (or place upright on level ground. Do not hold in hand, if more descriptive). Light fuse (or light fuse and get away, if more descriptive).

5.3.8 Sparklers. On the front and back panels: **WARNING (OR CAUTION) FLAMMABLE.** On the side, front, back, top, or bottom panel: **CAUTION.** Use only under [close] adult supervision. (Use of the word close is optional.) For outdoor use only. Do not touch glowing wire (or do not touch hot plastic, wood, etc., if more

descriptive). Hold in hand with arm extended away from body. Keep burning end or sparks away from wearing apparel or other flammable material.

5.3.9 Mines and shells. WARNING (OR CAUTION) EMITS SHOWERS OF SPARKS (OR SHOOTS FLAMING BALLS, if more descriptive). Use only under [close] adult supervision. (Use of the word close is optional.) For outdoor use only. Place on hard smooth surface (or place upright on level ground, if more descriptive). Do not hold in hand. Light fuse and get away.

5.3.10 Whistles without report. WARNING (OR CAUTION) FLAMMABLE. SHOOTS WHISTLE IN AIR (if applicable). Use only under [close] adult supervision. (Use of the word close is optional.) For outdoor use only. Do not hold in hand. Light fuse and get away.

5.3.11 Toy smoke devices and flitter devices. WARNING (OR CAUTION) FLAMMABLE (OR EMITS SHOWERS OF SPARKS, if more descriptive). Use only under [close] adult supervision. (Use of the word close is optional.) For outdoor use only. Do not hold in hand. Light fuse and get away.

5.3.12 Helicopter-type rockets. WARNING (OR CAUTION) FLAMMABLE (OR EMITS SHOWERS OF SPARKS, if more descriptive). Use only under [close] adult supervision. (Use of the word close is optional.) For outdoor use only. Place on hard, open surface. Light fuse and get away.

5.3.13 Party poppers. WARNING (OR CAUTION) FLAMMABLE. Use only under [close] adult supervision. (Use of the word close is optional.) Do not point either end toward face or other person. Hold in hand--jerk string.

5.3.14 Missile-type rockets. WARNING (OR CAUTION) FLAMMABLE (OR EMITS SHOWERS OF SPARKS, IF MORE DESCRIPTIVE). Use only under [close] adult supervision. (Use of the word close is optional.) For outdoor use only. Place on hard, open surface. Light fuse and get away.

5.3.15 Other Labeling--General. Any fireworks device not required to have a specific label as indicated above shall carry a warning label indicating to the user where and how the item is to be used and necessary safety precautions to be observed. All labels required under this section shall comply with the requirements of 16 CFR 1500.121.

ARTICLE 6

ACTIONS DECLARED UNLAWFUL; ENFORCEMENT; SANCTIONS

6.1 Actions Declared Unlawful. It shall be unlawful and a violation of this Code and any license issued under this Code, for any person:

6.1.1 To transport, possess, discharge, offer for sale, or sell any fireworks devices without first obtaining a license therefor as required under this Code;

6.1.2 To alter or change the composition or form of any fireworks devices held for sale from

the composition or form in which such fireworks were acquired from the wholesaler;

- 6.1.3** To change or alter any labels that are affixed to any fireworks devices held for sale or the packaging of any fireworks devices, at any time after their acquisition from the wholesaler;
- 6.1.4** To repackage any fireworks devices held for sale at any time after their acquisition from the wholesaler, with fireworks devices not authorized by this Code;
- 6.1.5** To smoke in or within 25 feet of any fireworks stand;
- 6.1.6** To operate or assist in the operation of any fireworks stand while under the influence of alcohol or illegal drugs;
- 6.1.7** Under the age of sixteen (16) years to operate or assist in the operation of any fireworks stand;
- 6.1.8** To transport, possess, discharge, offer for sale, or sell any fireworks devices prohibited by this Code;
- 6.1.9** To possess, use, consume, offer for sale, or sell any illegal drugs or any alcohol in or within 1300 linear feet of any fireworks stand.

6.2 Enforcement Authority. The Tax and Licensing Division of the Tulalip Tribes shall be responsible for enforcement of the provisions of this Code. The Tax and Licensing Division may delegate its enforcement authority to such tribal officials or tribal law enforcement officers as it deems appropriate.

6.3 Authority to Enter and Search. The Tax and Licensing Division, and tribal officials or tribal law enforcement officers to whom it has delegated authority, may enter and search any fireworks stand, home, other building, property, or vehicle owned or utilized by any licensee, or any person operating or assisting in the operation of any fireworks stand, for purposes of determining whether violations of this Code have occurred or are occurring. By acceptance of a license, the licensee consents to such entries and searches. Notwithstanding any other provision of this Code, no person other than the licensee may operate, or assist in the operation of, a fireworks stand without first having signed and delivered to the Tax and Licensing Division a consent to the Tax and Licensing Division, and tribal officials or tribal law enforcement officers to whom it has delegated authority, entering and searching any fireworks stand, home, other building, property, or vehicle owned or utilized by such person, for purposes of determining whether violations of this Code have occurred or are occurring.

6.4 Notice of Fireworks Code Violation, Immediate Restraint. A Notice of Fireworks Code Violation and/or Notice of Immediate Restraint may be served upon any person determined to have violated any provision of this Code, or of any regulation or license hereunder.

- 6.4.1** Licensees shall be responsible under this Code for violations committed or permitted by any person operating or assisting in the operation of the licensed fireworks stand.

6.4.2 Service of any notice authorized in this Code upon any person operating or assisting in the operation of a fireworks stand shall constitute constructive service upon the licensee.

6.4.3 Any person served with a Notice of Fireworks Code Violation shall immediately correct any violation identified in the notice. Any person who fails to take such corrective action shall be immediately restrained. Enforcement authorities are authorized to immediately take all actions reasonably necessary and appropriate to restrain, discontinue and correct the violation.

6.5 Emergency Action: Major Violations. The Board of Directors finds that the following unlawful acts are major violations of this Code, and constitute a serious threat to the public health and safety, justifying summary administrative emergency action: (1) smoking in or within 25 feet of any fireworks stand; (2) the possession, use, consumption, offer for sale, or sale of any illegal drugs or any alcohol in or within 1300 linear feet of any fireworks stand; (3) operating or assisting in the operation of any fireworks stand by any person under the influence of alcohol or illegal drugs; and (4) the transportation, possession, discharge, offer for sale, or sale of any fireworks device prohibited by this Code.

6.5.1 Where enforcement authorities determine that any such violation is ongoing, in addition to any other sanctions authorized under this Code, the violation shall be immediately restrained by mandatory closure of the fireworks stand and immediate suspension and seizure of the license therefor.

6.5.2 Where enforcement authorities determine that any ongoing violation involves the transportation, possession, discharge, offer for sale, or sale of any fireworks device prohibited or not authorized by this Code, in addition to any other sanctions authorized under this Code, such prohibited fireworks devices shall immediately be seized.

6.5.3 The suspensions and seizures authorized in this section shall continue in effect until any hearing on the violation, and thereafter for the duration of the pertinent season if the person or licensee is determined to have committed the violation.

6.6 Civil Penalties Authorized. In addition to any other sanction authorized under this Code or any regulations adopted hereunder, civil penalties are authorized. Civil penalties in this section are cumulative, and may be imposed in addition to any other sanction authorized by this Code or under any duly adopted regulations:

6.6.1 Any person who commits a major violation of this Code shall be liable for a civil penalty not exceeding One Thousand Dollars (\$1000) for each such violation.

6.6.2 Any person who commits any other violation of this Code, or any regulations adopted hereunder, or any condition of a license issued pursuant to this Code, shall be liable for a civil penalty not exceeding Five Hundred Dollars (\$500) for each such violation.

6.6.3 Any person who sells fireworks devices prohibited or not authorized by this Code shall be liable for a civil penalty in the amount equal to the gross sales price of such prohibited fireworks devices.

6.6.4 Any person who fails to furnish reports or who furnishes a knowingly false report on activities regulated by this Code as required by any provision of this Code or by regulations hereunder, shall be liable for a civil penalty not exceeding five hundred dollars (\$500).

6.7 License Suspensions, Revocations, Etc. The Tax and Licensing Division may suspend, revoke, or modify a license upon due notice and an opportunity for a hearing, as provided in this Code. The sanctions authorized in this section are cumulative and may be imposed in addition to any other sanction authorized under this Code or under any duly adopted regulations.

6.7.1 The license of any person found to have committed a major violation of this Code shall be suspended for not less than the duration of the pertinent season.

6.7.2 The license of any person found to have engaged in the transportation, possession, discharge, offer for sale, or sale of any fireworks device prohibited by this Code or by any license or any duly adopted regulations, shall be suspended, and such person shall be ineligible to apply for a license, for a period not less than fifteen (15) months commencing on the date of such violation.

6.7.3 The license of any person found to have committed any violation of this Code, or any license or any duly adopted regulations, may be suspended, and such person shall be ineligible to apply for any license, as follows:

6.7.3.1 For any single violation, not exceeding one (1) year commencing on the date of violation.

6.7.3.2 For any two violations occurring within any twelve (12) month period, not exceeding three (3) years commencing on the date of the latest violation.

6.7.3.3 For any three or more violations occurring within any twenty four (24) month period, five (5) years commencing on the date of the latest violation.

6.7.4 The Tax and Licensing Division shall suspend the license of any licensee who fails to pay any tax, fee, civil penalty or other assessment required under this Code, any license or any duly adopted regulation, when the same becomes due, until the fee, tax, penalty or assessment is fully paid. The licensee shall not be eligible to apply for removal of the suspension or for a new license until such assessment is paid.

6.7.5 The Tax and Licensing Division may revoke any license obtained by the use of materially false or misleading information.

6.8 Notices in Writing; Finality. Any Notice or sanction authorized under this Code, or under any regulation or license, shall be in writing, imposed by the Tax and Licensing Division or its designee, and served upon the person or licensee upon due notice and opportunity for hearing. If no petition for Magistrate's hearing is filed within ten (10) days following the date of service of the Notice, the sanction shall be final and not appealable. Any unpaid civil penalty may

thereafter be collected by the Tax and Licensing Division through seizure and sale of fireworks devices or other property of the violator, or by any other manner permitted by law.

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ARTICLE 7
TRIBAL COURT JURISDICTION; MAGISTRATES' HEARINGS;
LIMITATIONS ON JURISDICTION

7.1 Tribal Court Jurisdiction. The Tulalip Tribal Court shall have jurisdiction to hear and decide cases as authorized in this Article. The provisions of Ordinance #49 shall govern all proceedings in Tribal Court, including Magistrate Hearings, except that this Code shall govern to the extent of any inconsistency.

7.2 Hearings and Appeals in Tulalip Tribal Court.

7.2.1 Magistrate Hearings. The Board of Directors is hereby authorized and directed to annually appoint a Magistrate to be available during each fireworks season, to conduct Magistrate hearings pursuant to this Article. Any person or licensee who has been served with a Notice of Fireworks Code Violation or a Notice of Immediate Restraint, or who has been restrained for any violation of this Code, shall have the right to petition for a Magistrate hearing with respect to such Notice or restraint. The Tax and Licensing Division shall be a party to any such petition. The petition for hearing shall be in writing, on forms available from the Tax and Licensing Division, signed by the petitioner, and filed with the Tribal Court. A copy of any petition for hearing shall immediately be served on the Tax and Licensing Division. The Magistrate shall notify the petitioner and the Tax and Licensing Division of the time and date of the hearing, which shall commence not later than the close of the business day following the filing of the petition. No petition may be filed for a Magistrate hearing more than ten (10) days after imposition of any restraint or service of any Notice. Any Notice issued and restraint imposed by the Tax and Licensing Division shall become final and nonreviewable upon expiration of the time prescribed for filing of petitions for Magistrate hearings. At the Magistrate hearing, the Tax and Licensing Division shall have the burden of proving that the petitioner committed the charged violation(s) by clear, cogent and convincing evidence. The rules of evidence in such hearings shall be relaxed. At the conclusion of the hearing, the Magistrate shall make and serve on the parties a written decision and order on the charged violation(s). Such determination shall be final for purposes of any appeal. If the Magistrate determines that the person or licensee did not commit the violation(s) charged, immediately any restraint shall be removed, any license suspension lifted, and any seized property or license returned. If the Magistrate determines that the person or licensee did commit any of the violation(s) charged, it shall uphold the restraint as authorized in this Code.

7.2.2 Original Petitions in Tribal Court. The Tribal Court shall have jurisdiction to hear and decide the following original petitions under this Code:

7.2.2.1 The Tax and Licensing Division may petition the Tribal Court to impose any sanction for violations of this Code. The Tax and Licensing Division shall have the burden of proving that the person or licensee

committed the violation by clear, cogent and convincing evidence.

7.2.2.2 Any Tulalip tribal member may petition for review before the Tribal Court of the denial of any license application by the Tax and Licensing Division. In such cases the petitioner shall have the burden of proving that the decision of the Tax and Licensing Division was arbitrary, capricious or an abuse of discretion committed to the agency by law. If the Tribal Court affirms the agency, the petition shall be dismissed. If the Tribal Court reverses the license denial, it shall remand to the Tax and Licensing Division with instructions.

7.2.3 Appeals of Magistrate Hearings. The Tax and Licensing Division and any aggrieved person shall have a right to appeal any Magistrate's decision before the Tribal Court, and the Tribal Court shall have jurisdiction to hear and decide such appeals. An appeal shall be commenced with the filing and docketing of a Notice of Appeal. No Notice of Appeal shall be docketed unless accompanied by any applicable filing fee, the Magistrate's final written decision and order, and proof of payment into the Court registry of the full amount of any monetary sanction imposed on petitioner by the Magistrate. The Tax and Licensing Division shall be a party to any appeal. Hearings shall be de novo, and the appellant shall have the burden of proving that the Magistrate's decision was arbitrary, capricious, in violation of established law, or clearly erroneous. If the Tribal Court confirms all violations, it shall affirm the sanctions imposed by the Tax and Licensing Division and direct the Clerk of the Court to remit the civil penalties in the Court registry to the Tax and Licensing Division. If the Court finds no violation(s), it shall remove all sanctions and return such civil penalty to the appellant. If the Court finds that the person or licensee committed some, but not all, of the violation(s), the Court shall revise the sanctions imposed by the Tax and Licensing Division to include only those appropriate for the violation(s) determined to have occurred, and direct the Clerk of the Court to remit any civil penalty due and owing to the Tax and Licensing Division. No appeal may be commenced under this subsection more than ten (10) days after entry of the Magistrate's final written decision or order. A Magistrate's decision or order shall become final and nonreviewable upon expiration of the time prescribed for commencement of appeals.

7.3 Limitation on Jurisdiction. Notwithstanding any provision of this Code, or any other provision of Tulalip law, the Tribal Court shall not have legal or equitable jurisdiction to hear or determine any action or counterclaim against the Tulalip Tribes organized under §16 of the Indian Reorganization Act, or its officers, directors, employees, or representatives, or its Tax and Licensing Division, acting in either their official or individual capacities, nor the tribal corporation organized under §17 of the Indian Reorganization Act, or its officers, directors, employees, or representatives, acting in either their official or individual capacities, for damages or equitable relief, or any other relief; except as set forth in this Article.

7.4 Other Remedies. Nothing in this Code shall be construed to relieve from or lessen the responsibility or liability of any person for injury or damage to person or property caused by or resulting from the use of any fireworks devices regulated under this Code; nor shall the Tulalip Tribes, or any officer, agent, or employee thereof, incur or be held as assuming any liability by reason or in consequence of any license, permission, inspection or approval

authorized herein, or issued or given as herein provided, or by reason of consequence of any things done or acts performed pursuant to any provision of this Code.

ARTICLE 8 AMENDMENTS

- 8.1 Amendments.** It is the intent of the Tulalip Tribes to incorporate in this Code those safety requirements established by the Federal Product Safety Commission. Article 5 of this Code shall be interpreted as intending to conform with any amendments or changes in the regulations of the Federal Product Safety Commission governing the safety of fireworks devices, effective upon issuance of such federal regulations, unless the Board of Directors by resolution or ordinance directs otherwise.

ARTICLE 9 REPEALER

- 9.1 Prior Ordinances Repealed.** All prior ordinances and amendments thereto relating to fireworks devices are hereby repealed and this Code is adopted in its entirety in lieu thereof.

Legislative History

Adopted by Reso. 2000-219, Laws of June 19, 2000, and approved by the Superintendent, Puget Sound Agency, June 20, 2000.

Amended by Reso. 2004-153, Laws of May 7, 2004, and approved by the Superintendent, Puget Sound Agency May 18, 2004.

Amended by Reso. 2004-155, Laws of May 7, 2004, and approved by the Superintendent, Puget Sound Agency May 18, 2004.